

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES OF AMERICA,**  
**PLAINTIFF,**  
**v.**  
**KRAIG HILL,**  
**DEFENDANT.**

Case No. 13-CR-00787-YGR

**ORDER GRANTING MOTION TO  
SUPPRESS AND GRANTING MOTION  
FOR RETURN OF PROPERTY**

Re: Dkt. No. 22, 24

On December 5, 2013, the government charged defendant Kraig Hill in an indictment for violating Title 18 U.S.C. § 922(g)(1), namely for being a felon in possession of a firearm and ammunition.<sup>1</sup> On March 13, 2014, defendant Kraig Hill filed a Motion to Suppress and a related Motion for Return of Property. (Docket Nos. 22, 24.) Briefing on both is complete. With respect to the former, on March 28, 2014, the government filed a memorandum in opposition. (Docket No. 31.) The defense filed its reply on April 11, 2014 and the government filed its amended sur-reply on April 25, 2014. (Docket Nos. 36, 39.) On May 15, 2014, the Court ordered that an evidentiary hearing on the motion to suppress be conducted to resolve factual disputes.

The Court conducted an evidentiary hearing on June 18, 23, and 27, 2014. Thereafter, the government filed a supplemental brief on August 15, 2014 and the defense filed a post hearing brief on September 5, 2014.<sup>2</sup> (Docket Nos. 57, 62.) The government filed a final supplemental

<sup>1</sup> On August 21, 2014 the government filed a superseding indictment charging another count of a section 922(g)(1) violation for conduct on or about July 9, 2013 near Milpitas, California relating to possession of 50 rounds of Magtech .40 caliber ammunition.

<sup>2</sup> The motion to strike the Declaration of Stephen Light in Support of United States's Opposition to Defendant's Motion to Suppress Evidence (Docket No. 58) is **GRANTED** and any attendant

1 response on September 19, 2014. (Docket No. 64.)

2 The Court has considered all of the filings in this matter, the evidence received, and the  
3 post hearing briefing. The Court has also reviewed independently the transcript of the evidentiary  
4 hearing and the video surveillance. Based on the foregoing, and good cause showing, the Court  
5 **FINDS** that the defendant's Fourth Amendment rights were violated in his initial seizure and  
6 **GRANTS** in their entirety both the Motion to Suppress and the related Motion for Return of  
7 Property.

8 **I. Background.**

9 This case arises from an incident which occurred in the early morning hours of November  
10 16, 2013. As detailed below, the defendant in this case was found with a loaded Glock 23  
11 semiautomatic handgun bearing serial number RBE219.

12 On Saturday night, November 15, 2013, a unit from the Alameda County Sheriff's office  
13 was completing an operation to identify sales of liquor to under age individuals. Shortly before  
14 midnight the operation came to a close in the parking lot of the Town & Country Liquor Store on  
15 E. 14th St. in San Leandro, California. As the deputies were standing in a far section of the  
16 parking lot, they observed a gray Mercedes Benz with distinct oversized gold rims and tinted  
17 windows drive up to the liquor store. As the vehicle exited the parking lot, it accelerated to a high  
18 rate of speed, screeched its wheels, and lost traction slightly. The style of driving caused an  
19 immediate reaction from the deputies standing in the lot.

20 Given the lateness of the hour, the attempt to frequent a liquor store, and the observed  
21 manner of driving, two sets of deputies immediately entered their own cars and attempted to locate  
22 the driver of the Mercedes Benz. Ultimately, one set of deputies found the vehicle in a covered  
23 parking lot of a Budget Inn. The covered parking lot accommodated two rows of cars: one to the

24  
25 argument thereon. The Court did not review or consider either. The evidentiary portion of this  
26 proceeding closed on June 27, 2014. The government did not seek, nor did the Court grant, leave  
27 to reopen evidence. The government is hereby warned to avoid such presumptuous conduct in the  
28 future. The Court further notes that the government used a smaller font for footnotes in violation  
of the Local Rules. By using the smaller font, the government exceeded the page limits. Again,  
leave was not sought, nor granted, to exceed the page limits. Accordingly, footnotes 10 through  
18 are stricken from Docket No. 57 and footnotes 4 and 5 from Docket No. 64 are stricken as  
being in excess of the page limits accounting for proper page formatting.

1 right and one to the left of an extra wide driveway between the two. The vehicle at issue was  
2 parked in the third stall in the left row as one drove into the garage.

3 During the evidentiary hearing, deputy sheriff Scheuller and his partner Miguel testified  
4 about the search for the vehicle and its discovery at the Budget Inn. Unbeknownst to the  
5 witnesses, the defense had secured video coverage from a surveillance camera located in the  
6 garage with which the defense later impeached the deputies' testimony. The Court recounts the  
7 salient testimony, pre and post impeachment:

8 Deputy sheriff Scheuller testified that once out of his vehicle at the Budget Inn, he slowly  
9 approached the Mercedes Benz and was able to see two people sitting therein. He then saw the  
10 defendant turn and reach quickly into the back seat. At this point, he quickly approached the  
11 vehicle, open the door and ordered the defendant out. He stated that for officer safety reasons, he  
12 wanted to detain the driver as quickly as possible. He did not secure the vehicle, as the driver was  
13 his primary concern and he believed that his partner, deputy Miguel was contacting the passenger.

14 Scheuller handcuffed the defendant and asked him for identification which the defendant  
15 indicated was in his breast pocket. The deputy checked the pocket and located an identification  
16 card. Scheuller then asked a series of questions because he believed that while there was a similar  
17 likeness in the picture, he was not convinced that the card was the defendant's. During Scheuller's  
18 questioning of the defendant, Detective Petrini arrived. Petrini walked past Scheuller and looked  
19 into the car. Upon looking into the back seat with his flashlight, Petrini saw a gun, yelled a  
20 warning, and pulled out his own gun. Scheuller did not. Rather, he moved the defendant and  
21 searched for another identification card which he found. At some point thereafter, deputy sheriff  
22 Miguel ran the identification through dispatch, and found that the defendant was subject to a four-  
23 way search clause.

24 After lengthy and detailed questioning by both sides, Scheuller testified that he did not  
25 have a distinct memory of any specific conversations. However, and of critical importance, he  
26 also testified that he had a distinct memory of the events. This was in response to the Court's own  
27 questioning for which Scheuller offered no qualification:  
28

1 Q: Do you have a distinct memory of this incident? Or are you just basing your testimony  
2 on the --on reviewing the police report in preparation?

3 A: I have a distinct memory of this incident.

4 Transcript at 103:14-18. His tone with respect to all portions of his testimony displayed  
5 confidence without any measure of hesitation as to the accuracy of his statements.<sup>3</sup>

6 Next, deputy Miguel testified. He claimed that upon leaving the patrol car, he approached  
7 the passenger side of the vehicle and did so with heightened senses. He claimed to be concerned for  
8 his safety because "hands kill." (Transcript at 140:11-141:6.) He recalled entering the proverbial  
9 "fatal funnel," that is, an area that is small and lacks adequate cover. (*Id.* at 141:16-20.) He asked  
10 the female passenger to exit the car and provide identification which she did. Despite his concerns,  
11 did not draw his gun, handcuff the female passenger, or otherwise check the vehicle. His intent  
12 was to check the vehicle after he finished with the passenger.

13 With respect to Detective Petrini, Miguel testified that he arrived during the course of the  
14 incident. First, Petrini approached the driver side and then moved to the passenger side. Almost  
15 immediately thereafter, Miguel heard Petrini yell about a firearm and saw him withdraw his  
16 sidearm. Once Miguel secured the passenger, he opened the back, passenger-side door and found  
17 a black semiautomatic Glock on the right rear seat. The firearm was made safe and the magazine  
18 removed. The magazine held a capacity of 10 rounds.

19 The last witness, Detective Petrini, a 15-year veteran, testified that he arrived on the scene  
20 after Scheuller and Miguel, entered the garage, and used his flashlight to illuminate the inside of  
21 the vehicle. He confirmed that he would not have been able to see inside the vehicle without the  
22 additional light. As a field training officer, Detective Petrini observed that the officers had parked  
23 in a tactically poor position. When he saw the gun inside the car, he yelled the same to his  
24 colleagues and drew his weapon until the female passenger was secure. He testified that the  
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26 <sup>3</sup> Deputy Scheuller also testified that he found money in the defendant's pocket after the gun was  
27 located. Transcript at 91:91:6-8. More precisely, \$2,471 was found in the defendant's pocket.  
28 There is no dispute as to these facts which are subject to the Motion to Return of Property.  
(Docket No. 24.) Accordingly, the Court did not order an evidentiary hearing with respect to this  
issue.

1 response was appropriate because the passenger may have lunged or had a weapon. Once the  
2 female passenger was handcuffed, he re-holstered his firearm. His gun was out for only 5 to 10  
3 seconds. He also chastised Miguel for not having a flashlight.

4 In support of its motion, the defense, in its own case, offered the surveillance video. The  
5 real-time video showed both consistencies and inconsistencies with respect to the sworn testimony  
6 of the specific details of the encounter. The Court recounts here only a couple, namely the use of  
7 the emergency lights and the location of the police car relative to the Mercedes Benz. Deputy  
8 Scheuller's pre-video testimony about the emergency lights was particularly specific:

9 Q: And you testified that ...when you use the lights, it creates the desired effect; right?

10 A: Yes.

11 Q. And what is that desired effect?

12 A. So it alerts our to [sic] presence.

13 Q. And so you did want to do that here; correct?

14 A. Not necessarily. I mean, that's not -- that isn't necessarily the case, that we didn't want  
15 to. We -- I chose not to.

16 Q. Okay. And so you didn't turn the lights on?

17 A. And I -- no, I didn't. And I -- partially it's because of the position that the -- that my  
18 vehicle was in was in [sic] somewhat of a compromising position. It's not what we would  
19 consider a routine traffic stop type of a configuration, where if we were and his vehicle  
20 was in front of mine, I certainly would have used my lights to alert to our presence. But  
21 because we didn't notice that car until we were directly behind it, I'm already in a, in a  
22 compromising position with my driver's side being to that vehicle, which is not a  
23 traditional traffic stop configuration and it puts -- it puts our officer safety at risk.

24 Transcript at 81:9-82:4. Despite this testimony, the video showed the unmistakable use of  
25 emergency lights which were both bright and flashing.

26 Both deputy sheriffs similarly embellished with respect to the positioning of the vehicles.  
27 As an example, Scheuller testified without reservation: "Yes, there was quite a bit of space  
28 between my car and the Mercedes. There was -- there was clearly enough space for a vehicle to

travel in between us." *Id.* at 37:21-23. And, Miguel testified:

Q: Okay. And your declaration says that you were not blocking it in. Is that correct?

A: That is correct.

Q. According to your declaration the Mercedes could have backed out of the parking stall.

A. Yes.

Q. And according to your declaration there was enough space so the car could have actually, if you had allowed it, just driven out of the parking lot.

A. Yep.

Transcript at 175:4-13. The colloquy continues at great length as Miguel expounds with particularity on the issue. Again, the events as shown on the video surveillance are directly contrary. Given the closeness of the vehicles, the Mercedes Benz could not have exited the spot with sufficient and reasonable clearance to avoid hitting the patrol car. Any argument to the contrary is, at best, academic.

## **II. Motion to Suppress.**

### **A. Framework**

The defense brings a motion to suppress on the following grounds: First, the defendant argues that the government's initial seizure of him was not lawful and that the subsequent seizure and recovery of evidence was not reasonable under the circumstances. Second, he argues that the government has failed to establish that the inevitable discovery exception applies. As part of this second argument, the defense claims that the deputies are not credible and that the initial handcuffing Mr. Hill violated the Fourth Amendment. The government disagrees asserting that each of the steps described were performed within the relevant constitutional parameters.

The constitutional issues relating to this dispute are well-established and not reasonably in dispute.

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. Amend. IV. Under *Terry*<sup>4</sup> and its progeny, police may, consistent with the Fourth

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<sup>4</sup> *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d. 889 (1968).

Amendment, stop persons in the absence of probable cause under limited circumstances. *See Dunaway v. New York*, 442 U.S. 200, 207–11, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979). In particular, law enforcement officers may briefly stop a moving automobile to investigate a reasonable suspicion that its occupants are involved in criminal activity. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 881, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975); *United States v. Hartz*, 458 F.3d 1011, 1017 (9th Cir.2006); *United States v. Sigmond-Ballesteros*, 285 F.3d 1117, 1121–22 (9th Cir.2002). However, the governmental interest in investigating possible criminal conduct based on an officer's reasonable suspicion may be outweighed by the Fourth Amendment interest of the driver in remaining secure from the intrusion. *See Delaware v. Prouse*, 440 U.S. 648, 654–55, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979).

*United States v. Grigg*, 498 F.3d 1070, 1074-75 (9th Cir. 2007). Thus, the issue at hand turns on the Court's evaluation of the "reasonable suspicion" articulated here.

Critical to the Court's evaluation of the instant motion is the fundamental purpose of the exclusionary rule which the Ninth Circuit recently affirmed:

While the Supreme Court has articulated various rationales for the exclusionary rule, the rule's primary purpose has been to deter law enforcement from carrying out unconstitutional searches and seizures. Although the exclusionary rule is often framed as a nuisance to law enforcement, we view it as a promoter of police professionalism and education. *See Herring v. United States*, 555 U.S. 135, 156 n. 6, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009) (Ginsburg, J., dissenting) (noting that “professionalism is a sign of the exclusionary rule's efficacy....”). The exclusionary rule has helped police more effectively secure good evidence without violating the law and the rights of American citizens. *See, e.g., Myron Orfield, The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers*, 54 U. Chi. L.Rev. 1016, 1036–40 (Summer 1987); Stephen H. Sachs, *The Exclusionary Rule: A Prosecutor's Defense*, 1 Crim. Just. Ethics 28, 31–32 (1982). The rule has also improved the quality of police training, education, and case reporting. *See Wayne LaFave, Search and Seizure: A Treatise on the Fourth Amendment* § 1.2(b) at 33 (4th ed.2004); Yale Kamisar, *Public Safety v. Individual Liberties: Some “Facts” and “Theories”*, 53 J.Crim. L. Criminology & Police Sci. 171, 179–81 (1962); Orfield, *supra*, at 1028, 1040; Sachs, *supra*, at 31–32.

*United States v. Underwood*, 725 F.3d 1076, 1084-85 (9th Cir. 2013).<sup>5</sup> As stated, the rule not only exists to improve and monitor the interaction between law enforcement and the public but the reporting of these events in courts of law.

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<sup>5</sup> *Underwood* does discuss a "good faith exception" (*id.*) but the exception does not apply here as the credibility determination focuses on the officers' own choice to testify in the manner wholly inconsistent with their true and accurate recollection.



1 As applied here, the Court discounts the entirety of the deputy Scheuller's and Miguel's  
2 testimony because of the cavalier and over-reaching approach they employed in testifying. Due to  
3 the number and quality of the inconsistencies in the witnesses' testimony, and the surrounding  
4 circumstances including that the precipitating event was a completed traffic violation with no  
5 immediate threat to the public shown or apparent, the Court does not find credible the testimony  
6 suggesting that the defendant's movement to the backseat of the Mercedes Benz was "furtive," and  
7 thus, a reasonable basis for the defendant's seizure. The fact that a firearm was later found is not  
8 relevant to the analysis.  
9

10 The Court finds that deputies Scheuller and Miguel each chose to engage in an elaborate  
11 explanation of certain events of the night rather than just testify to what they remembered,  
12 including, perhaps, an honest and understandable statement regarding the lack of memory as to  
13 many details. Had they been honest and not attempted to bolster their own credibility, the Court  
14 might have agreed that the testimony, which was so resoundingly contradicted by the video, was  
15 ancillary to the key events. However, such was not the case. An officer cannot have a "distinct  
16 memory," testify adamantly *without reservation* that he "chose not to" use emergency lights for a  
17 particular strategic reason, and then expect a Court to believe him when incontrovertible evidence  
18 proves he did not so act. Nor can he provide prolonged, detailed testimony regarding the location  
19 of the vehicles in use that night, which is then shown to be false, and expect a Court to believe him  
20 to be trustworthy and fully honest as it relates to other details.  
21

22 The Court has additional concerns that the deputies were attempting to fashion their  
23 testimony to fit precisely within some understanding of the factors courts frequently consider with  
24 these motions. For instance, the deputies' repeated pre-impeachment claims that the defendant  
25 "was not blocked in" (and therefore could have left) suggests that they may have some  
26 understanding of the considerations courts use when evaluating custodial detentions. Similarly, in  
27 their testimony the deputies used buzz words like "furtive" and "concern for safety" rather than  
28



1 focus on the specific facts that might lead a court to conclude the same. The notion that deputy  
2 Miguel could be "concerned" and on "heighten" alert and then loiter around the vehicles, as shown  
3 on the video, begs the question and reaffirms that the testimony was not genuine but rather an  
4 after-the-fact pronouncement.

5 Law enforcement officers must understand that their duty to tell the truth includes a duty  
6 *not* to embellish; *not* to portend confidence as to details, when such confidence does not genuinely  
7 exist; and *not* to swear that testimony is based on distinct memories where, in fact, it is assumed  
8 based upon custom and practice. On redirect, only after faced with video coverage demonstrating  
9 conflicts with their testimony, did the deputies become much more sanguine about their respective  
10 memories. Their reflection came too late. To sanction such testimony condones conduct which  
11 should have never occurred and which should not be encouraged. It is only through the granting  
12 of these motions that the government will ensure that line officers understand the limits of their  
13 authority and duties affiliated with their office. On these bases, the Court finds that the  
14 defendant's Fourth Amendment rights were violated when he was removed from his vehicle as an  
15 unreasonable seizure.  
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18 The Court next addresses the government's argument that the inevitability doctrine applies.  
19 Here, the Court finds that the government has not shown that it was inevitable that the firearm  
20 would have been found had the initial removal of the defendant not occurred. *United States v.*  
21 *Young*, 573 F.3d 711, 721 (9th Cir. 2009). Rather the evidence is to the contrary. In this context,  
22 the Court considers the events as if the defendant had remained in his vehicle as was  
23 constitutionally required. First, under these circumstances, there was no independent reason  
24 shown for the defendant to have been removed. The original concern was that the driver was  
25 driving dangerously, potentially under the influence, and thus, a public safety concern. However,  
26 there is no indication that the defendant was under the influence and the vehicle was parked and  
27 presumably turned off. There was no evidence that under these circumstances the defendant  
28

would have been removed from the vehicle.

Second, as cover to Scheuller, the evidence does not support a finding that Miguel would have found the firearm on his own while covering on the passenger side of the car. He did not have a flashlight, and as confirmed by Detective Petrini, would not have been able to see inside the vehicle without one. Third, it is not clear that Miguel would have even entered the "fatal funnel" if covering for Scheuller while Scheuller asked questions of the defendant from the driver's side door. Fourth, given the delay in Detective Petrini's arrival, there is no evidence that he would have peered with his flashlight into the vehicle or that the detention would have lasted that long. Finally, with respect to the occupants' search clauses, the government did not proffer any evidence of pattern or practice with respect to using those clauses as a basis for searching vehicles during traffic stops and the Court will not infer such evidence.

Because the Court finds that the evidence is insufficient to support removal of the defendant from his vehicle, and that the government has also failed in its burden to show evitable discovery, all evidence obtained was as a result of the initial constitutional violation, and therefore, must be suppressed. The Motion to Suppress is **GRANTED** in its entirety.

For similar reasons, no basis exists for the government's initial discovery and subsequent retention of the currency found on the defendant, and therefore, it must be returned. In light of this finding, the Court need not address the government's other arguments which are premised on the notion that the currency was lawfully obtained. The Motion for Return of Property is **GRANTED**. This terminates Docket Nos. 22 and 24.

**IT IS SO ORDERED.**

Dated: November 5, 2014



YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT JUDGE